

JUN 09 2011

TO: _____

FILE: _____



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Valley Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CHARLOTTESVILLE-ALBEMARLE AIRPORT AUTHORITY
FOR
CHARLOTTESVILLE-ALBEMARLE AIRPORT RUNWAY EXTENSION
Permit No. WP4-08-0094**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Charlottesville/Albemarle Airport Authority, regarding the Charlottesville/Albemarle Airport Runway Extension project, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "CAAA" means Charlottesville/Albemarle Airport Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* CAAA is a "person" within the meaning of Va. Code § 62.1-44.3.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
7. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
8. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344).
12. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
13. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner

which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

14. "Property" or "Parcel" means the Charlottesville Albemarle Airport Authority facility located north of Charlottesville off of Rt. 29 north in Albemarle County, Virginia, owned by CAAA.
15. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
16. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
17. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.14:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
20. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
21. "USACE" means the United States Army Corps of Engineers.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VWP" means Virginia Water Protection.
25. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. CAAA owns and operates the Charlottesville/Albemarle Airport facility located north of Charlottesville off of Rt. 29 north in Albemarle County, Virginia.
2. On May 21, 2008, DEQ issued Virginia Water Protection Permit No. WP4-08-0094 to CAAA for the Property with an expiration date of May 20, 2015. The Permit authorized permanent impacts to approximately 0.08 acres of palustrine, emergent wetlands and 937 linear feet of stream channel associated with an unnamed tributary to Jacobs Run, each of which are considered State waters. In addition, on May 29, 2009, CAAA was provided coverage under Nationwide Permit NWP 13 to upgrade an existing, damaged stream crossing by replacing the crushed culvert with two 36 inch culverts to address expected high flows, to install a trash barrier, and to implement approximately 400 linear feet of bioengineered bank stabilization downstream of the crossing.
3. On February 4, 2011, Department staff inspected the Property to verify compliance with Permit. During the inspection, staff observed the following in an unnamed tributary to Jacobs Run (different from that referenced in the Permit) ("the Stream Segment") immediately offsite from the permitted project area to Crickenberger Lane:
 - a. Construction of multiple temporary rock check-dam structures in the Stream Segment;
 - b. Discharge of an unknown quantity of sediment in the Stream Segment; and
 - c. A total impacted Stream Segment of approximately 300 linear feet in length.
4. The rock check-dams are considered fill material and a pollutant because they replace portions of surface water and dry land or change the bottom elevation of the surface water.
5. CAAA does not have a Permit for the discharge of fill material into the referenced unnamed tributary to Jacobs Run.
6. Va. Code § 62.1-44.15.20 and 9VAC 25-210-50.A. provides that "except in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands, or on or after October 1, 2001, conduct the following activities in a wetland: New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; filling or dumping; permanent flooding or impounding; or new activities that cause significant alteration or degradation of existing wetland acreage or functions."
7. On February 18, 2011, DEQ issued Notice of Violation No. W2011-02-V-0004 to CAAA for the violation of Va. Code § 62.1-44.15.20 and 9 VAC 25-210-50 observed during the February 4, 2011 inspection.

8. On March 18, 2011, Department staff met with representatives of CAAA to discuss the violations and corrective actions necessary for CAAA to return to compliance. CAAA indicated that the unpermitted discharge of fill material was a result of not realizing that the Stream Segment impacted was not part of the Permit. During the March 18, 2011 meeting, DEQ requested the CAAA submit a Corrective Action Plan (CAP) and schedule to address the violations.
9. On March 31, 2011, CAAA submitted a draft CAP for incorporation into a proposed Consent Order.
10. Based on the February 4, 2011, inspection, the March 18, 2011 meeting, and the file review, the Board concludes that CAAA has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 and 9 VAC 25-210-90 and the Permit as described in paragraphs C(3) through C(6) above.
11. On May 2, 2011, CAAA submitted a revised and updated CAP for incorporation into this Order.
12. In order for CAAA to return to compliance, DEQ staff and representatives of CAAA have agreed to the Schedule of Compliance, which will be incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders CAAA, and CAAA agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$12,480** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

CAAA shall include its Federal Employer Identification Number (FEIN) [(54-1262262)] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of CAAA for good cause shown by CAAA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, CAAA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. CAAA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. CAAA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by CAAA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. CAAA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. CAAA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CAAA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the CAAA intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and CAAA. Nevertheless, CAAA agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. CAAA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to CAAA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CAAA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by CAAA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of CAAA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind CAAA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of CAAA.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Charlottesville/Albemarle Airport Authority voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23rd day of September, 2011.

Amy T. Owens
Amy T. Owens, Valley Regional Director
Department of Environmental Quality

Charlottesville/Albemarle Airport Authority voluntarily agrees to the issuance of this Order.

Date: 6-9-11 By: Barbara Hutchins Executive Director
(Person) (Title)
Charlottesville/Albemarle Airport Authority

Commonwealth of Virginia

City/County of Albemarle

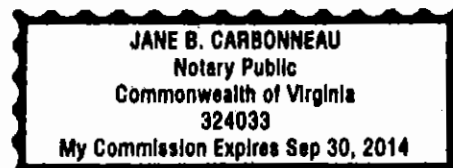
The foregoing document was signed and acknowledged before me this 9 day of June, 2011, by Barbara Hutchins who is Executive Director of Charlottesville/Albemarle Airport Authority on behalf of the authority.

Jane B. Carbonneau
Notary Public

Registration No. _____

My commission expires: _____

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. CAAA shall immediately cease impacts to state water and shall not resume such impacts unless authorization from DEQ is granted via a Permit.
2. CAAA shall comply with the requirements of its Permit, except as specified in this Order and the approved CAP.
3. CAAA shall begin implementation of the Corrective Action Plan in accordance with the schedule contained therein. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. CAAA shall complete the CAP in accordance with its terms.
 - a. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then CAAA shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, CAAA shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by CAAA in accordance with the schedule set forth in the alternative CAP.
 - b. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then CAAA shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. CAAA shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. CAAA shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.
4. Unless otherwise specified in this Order, CAAA shall submit all requirements of Appendix A of this Order to:

**Eric Millard
Environmental Specialist II
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7813 Phone**

(540) 574-7878 Fax
Eric.Millard@deq.virginia.gov

and copy

Steve Hetrick
Enforcement Specialist Sr.
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7833 Phone
(540) 574-7878 Fax
Steven.hetrick@deq.virginia.gov